

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DENNIS TAYLOR, et al.,)
)
Plaintiffs,)
)
v.) Case No. 4:14-CV-00293-JED-TLW
)
MICHELIN NORTH AMERICA, INC.,)
et al.,)
)
Defendants.)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY BALL, et al.,)
)
Plaintiffs,)
)
v.) Case No. 4:16-CV-00169-JED-PJC
)
MICHELIN NORTH AMERICA, INC.,)
et al.,)
)
Defendants.)

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION AND BRIEF
TO CONSOLIDATE PURSUANT TO RULE 42(A)
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Defendants Michelin North America, Inc., and Goodrich Corporation ("Defendants")¹ submit this response to Plaintiffs' Motion and Brief to Consolidate Pursuant to Rule 42(A) of the Federal Rules of Civil Procedure. Plaintiffs' motion requests consolidation of this case, *Taylor v. Michelin North America, Inc.*, et al., Case No. 4:14-CV-00293-JED-TLW, with a recently-filed case, *Ball v. Michelin North America, Inc.*, et al., Case No. 4:16-CV-00169-JED-PJC. After

¹Uniroyal Goodrich Tire Company is not an existing entity, a fact of which counsel for the Plaintiffs were aware when they filed the Complaint in *Ball v. Michelin North America, Inc.*, et al., Case No. 4:16-CV-00169-JED-PJC.

reviewing Plaintiffs' motion, Defendants do not have a substantive legal basis to oppose consolidation pursuant to Federal Rule of Civil Procedure 42(A). However, Defendants submit this response to address two related points.

First, Plaintiffs' characterization of their efforts to file an amended complaint as thwarted by Defendants' alleged failure to respond, thus forcing them to file a separate complaint, is misleading. Before consenting to its filing, Defendants asked for an opportunity to review the proposed Second Amended Complaint. Plaintiffs' counsel forwarded the pleading at 11:00 a.m. on March 31. When Defendants indicated they would not be able to respond by the noon deadline they were given, Plaintiffs abandoned the proposed Second Amended Complaint and filed the *Ball* case as an original proceeding instead.

Second, Plaintiffs' choice to file a separate action—thereby requiring this motion to consolidate, rather than amending the *Taylor* complaint, appears to be a procedural effort to prevent Defendants from again moving to dismiss the medical monitoring claim in the *Taylor* case. The newly filed action, *Ball*, does not contain a medical monitoring claim, although the *Ball* plaintiffs are absent class members in the proposed *Taylor* medical monitoring class. Thus, by filing a separate action that does not contain the claim Defendants would challenge, Plaintiffs avoided a second motion to dismiss that the Court appeared to specifically invite. Defendants wish to make clear that they do intend, at an appropriate time, to file a renewed dispositive motion on the *Taylor* medical monitoring claim, addressing the matters raised in the Court's March 24 2016 Order and demonstrating that Oklahoma law would not permit a medical monitoring remedy on the facts of this case. (ECF No. 48.) Accordingly, Defendants do not oppose consolidation on this ground.

In sum, Defendants do not oppose consolidation of *Taylor* and *Ball*, but note that this motion was entirely avoidable had Plaintiffs proceeded properly, as they advised they intended to, by filing an amended complaint instead of a separate action.

Dated: May 5, 2016

Respectfully submitted,

By: /s/ Connie M. Bryan

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2016, a true and correct copy of the foregoing was filed via this Court's electronic filing system, which will automatically send notifications to the following:

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